IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 41 OF 2005

Iftekar Abdul Haque Borodgar. .... Appellant.

Versus.

Bombay Municipal Corporation. .... Respondents.

Shri R.A.Thorat for the Appellant.

Shri J.Xavier for the Respondents.

CORAM : ABHAY S. OKA, J.

DATED : 17th January, 2005.

P.C.:

1. Admit. The learned Counsel for the Respondents waives service. Taken up for hearing immediately.

2. By the impugned order, the learned trial Judge has declined to grant ad-interim relief. Shri Thorat, learned Counsel for the Appellant has produced before me a copy of the order dated 22nd December 2004 passed in A.O.No.1117 of 2004. He submits that as facts in both the cases are identical, same order can be passed. The said prayer of Shri Thorat is opposed by the learned Counsel for the Respondents. He states that on the basis of the material which was available before the learned trial Judge, he has declined to grant any ad-interim relief in favour of the Appellant.

3. I have considered the rival submissions. It is to be noted here that Shri Thorat, the learned Counsel appearing for the Appellant, has fairly stated on instructions that the Appellant will not agitate the

issue of not having issued notice under section 351 of the Mumbai Municipal Corporation Act to the landlord/ owner of the property either in the Notice of Motion or in the Suit.

4. In the impugned order the learned trial Judge has referred to certain documents and action papers shown by the learned Counsel appearing for the Respondent-Corporation. The learned Counsel for the Appellant submitted that the Appellant had no opportunity to meet the said documents as the same were not produced in Court. In view of this situation, I am of the view that similar order as passed in A,O.No.1117 of 2004 deserves to be passed in this Appeal.

5. Hence the following order is passed:

(i) The Respondent-Corporation will file reply to the Notice of Motion within a period of six weeks from today. Rejoinder, if any, to be filed within a period of two weeks thereafter.

(ii) The trial Court will dispose of the Notice of Motion within a period of six weeks from the last date fixed for filing rejoinder.

(iii) The Respondent-Corporation will not take

coercive action against the suit structure during the pendency of the Notice of Motion.

(iv) The Notice of Motion will be decided without being influenced by the reasons recorded by the learned trial Judge while deciding the prayer for grant of ad-interim relief.

(v) Shri Thorat, the learned Counsel for the Appellant/Plaintiff makes a statement that the Appellant will not agitate the issue of non service of notice under section 351 of the Mumbai Municipal Corporation Act on the landlord/owner of the suit structure. He will not agitate the said issue either at the time of hearing of the Notice of Motion or at the time of hearing of the suit. The said statement is accepted.

(vi) The Appeal is disposed of in the above terms with no order as to costs.

(vii) The parties and the trial Court to act on authenticated copy of the order.

Judge.